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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

JAN 6 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Allocation of Spectrum Below ) ET Docket No. 94-32  
5 GHz Transferred from )  
Federal Government Use )

**REPLY COMMENTS OF THE  
NATIONAL ASSOCIATION OF BROADCASTERS AND THE  
ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.**

In these reply comments, the National Association of Broadcasters ("NAB")<sup>1</sup> and the Association for Maximum Service Television, Inc. ("MSTV")<sup>2</sup> offer a brief response to certain of the initial comments submitted on the Commission's Notice of Proposed Rule Making ("NPRM")<sup>3</sup> in the above-captioned proceeding. Our reply comments reiterate our support for the concept of spectrum reallocation recommended in the joint, initial comments submitted December 19, 1994, by NAB, MSTV and several other major television broadcast entities.<sup>4</sup>

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<sup>1</sup>NAB is a nonprofit, incorporated association of radio and television stations and networks which serves and represents the American broadcast industry.

<sup>2</sup>MSTV is a nonprofit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality for the local broadcast system.

<sup>3</sup>NPRM in ET Docket No. 94-32, 59 Fed. Reg. 59393 (November 17, 1994). The deadline for the filing of reply comments was extended from January 3, 1995, until today by the Commission's Office of Engineering and Technology Order in ET Docket No. 94-32, released December 28, 1994.

<sup>4</sup>The other parties participating in this filing were the Association of America's Public Television Stations; Capital  
(continued...)

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In those earlier comments, as in the comments and reply comments NAB and MSTV filed<sup>5</sup> in the inquiry<sup>6</sup> stage of this proceeding, we urged the Commission to reallocate the 4660-4685 MHz band for purposes of wideband, advanced digital video services, for terrestrial fixed and mobile auxiliary broadcast operations.

By its NOI, the Commission had sought comments on how three frequency bands (2390-2400 MHz, 2402-2417 MHz and 4660-4685 MHz), targeted for near-term reallocation from government to private sector use,<sup>7</sup> should be employed in the future. In its subsequent NPRM, the Commission proposed that all three bands be designated for general "Fixed and Mobile" services, rather than specifying particular frequency bands for particular uses.<sup>8</sup> However, concerning the 4660-4685 MHz frequency band desired by broadcast interests for auxiliary purposes, the Commission's NPRM essentially rejected various other parties' proposals (submitted in comments filed in response to the NOI) for alternate use of

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<sup>4</sup>(...continued)  
 Cities/ABC, Inc.; CBS Inc.; FOX, Inc. & Fox Broadcasting Stations, Inc.; National Broadcasting Company, Inc.; Public Broadcasting Service; and the Radio-Television News Directors Association.

<sup>5</sup>See Comments of MSTV, filed June 15, 1994; see also Reply Comments of NAB, filed June 30, 1994.

<sup>6</sup>See Notice of Inquiry ("NOI") in ET Docket No. 94-32, 9 FCC Rcd 2175 (1994).

<sup>7</sup>Such reallocation is being undertaken pursuant to the terms of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, 107 Stat. 312 (August 10, 1993).

<sup>8</sup>NPRM, supra, note 3, ¶ 9.

this frequency band. NAB, MSTV and other broadcast representatives were pleased that our proposed use of the 4660-4685 MHz band was the only one which the Commission tentatively endorsed in the NPRM.

In response to the NPRM, a limited number of parties has made new proposals for using the 4660-4685 MHz band for purposes other than digital broadcast auxiliary services. Among these parties are Alcatel Network Systems, Inc ("Alcatel"),<sup>9</sup> the American Petroleum Institute ("API")<sup>10</sup> and American Telecasting, Inc. ("ATI").<sup>11</sup> NAB and MSTV, herein respond to their comments.

In their comments, ATI argues that the Commission should allocate the 4660-4685 MHz band for use by wireless cable operators for return paths for interactive television applications. ATI suggests that the Commission should allocate this spectrum in blocks licensed on an area-wide basis, in the same fashion as for cellular mobile radio. Alcatel and API argue that the 4 GHz band should be used for point-to-point microwave and, specifically, for the incumbents displaced from the 2 GHz bands to make way for the new personal communications service ("PCS").

Alcatel further contends that the Commission's proposed open-market approach to allocation in the 4 GHz band will be

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<sup>9</sup>See Comments of Alcatel, received by the Commission on December 19, 1994.

<sup>10</sup>See Comments of API, filed December 19, 1994.

<sup>11</sup>See Comments of ATI, filed December 19, 1994.

disastrous and that the FCC should adopt service-specific allocations and technical standards. API also asserts that broadcasters have overstated the extent to which the current broadcast auxiliary band is congested, thus calling into question broadcasters' need for additional auxiliary spectrum.

For some time it has been apparent that current broadcast auxiliary frequencies -- especially those used for Electronic News Gathering ("ENG") -- are used heavily. Indeed, in major markets, such use has resulted in virtual oversaturation of these frequencies; demand for broadcast auxiliary spectrum far exceeds the capacity of the existing allocation.<sup>12</sup>

Insofar as television ENG and other broadcast auxiliary operations are concerned, the broadcasting industry has submitted a large amount of information on existing usage into the records of the Commission's proceedings on PCS<sup>13</sup> and "emerging technologies."<sup>14</sup> These include various filings submitted by NAB

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<sup>12</sup>See, e.g., Comments of MSTV, NAB, et al., filed December 19, 1994; NAB Comments in Gen. Docket No. 90-314, filed October 1, 1990; see also Cohen, E., Television Auxiliary Frequency Usage Surveys, NAB, June 23, 1989, submitted as an exhibit to these October 1, 1990, NAB Comments.

<sup>13</sup>See, e.g. Notice of Proposed Rule Making and Tentative Decision in Gen. Docket No. 90-314 and ET Docket No. 92-100, 7 FCC Rcd 5676 (1992); and Tentative Decision and Memorandum Opinion and Order in Gen. Docket No. 90-314, 8 FCC Rcd 6589 (1992).

<sup>14</sup>See, e.g. Third Report and Order in ET Docket No. 92-9, 8 FCC Rcd 6589 (1993).

and allied parties.<sup>15</sup> Indeed, these submissions also have led to the Commission's decision not to propose reallocation of the 1990-2110 MHz band currently employed for various broadcast auxiliary services.<sup>16</sup>

The National Telecommunications and Information Administration ("NTIA") staff study, titled A Preliminary Look at Spectrum Requirements for the Fixed Services,<sup>17</sup> provided additional, compelling evidence that the television auxiliary spectrum is overcrowded and concluded that the crowding problem is surely to become more critical in the future. Thus, the NTIA shares the broadcasting industry's view that the existing broadcast auxiliary frequency bands are overcrowded and that a significant growth rate in the demand for such this spectrum will continue.<sup>18</sup>

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<sup>15</sup>See, e.g., Joint Comments of NAB, et al., in Gen. Docket No. 90-314, filed January 9, 1992; see also Joint Comments of NAB, et al., in ET Docket No. 92-9, filed June 8, 1992.

<sup>16</sup>See, Memorandum Opinion and Order in Gen. Docket No. 90-314, released June 13, 1994.

<sup>17</sup>Matheson, J. and Steele, F., A Preliminary Look at Spectrum Requirements for the Fixed Services, U.S. Department of Commerce, Institute for Telecommunications Sciences, May, 1993.

<sup>18</sup>This NTIA study is cited as one example of the record evidence supporting the notion that current broadcast auxiliary bands are overcrowded. Thus, this NTIA study of course, and contrary to the comments of API (the authors of which apparently have not done much research into the record of this proceeding nor related FCC proceedings) is not the only foundation for the position of MSTV, NAB and other broadcasters. Rather, broadcast parties have referred to a wide variety of studies, reports and surveys, which all have come to the same conclusion.

It is television broadcasters' view that the Commission can help relieve this frequency congestion -- and better pave the way for the provision of advanced, digital broadcast and broadcast auxiliary services -- through the reallocation of the 4660-4685 MHz band for such broadcast auxiliary operations. Moreover, this position is consistent with NAB's, MSTV's and other broadcasters' request that our existing 2 GHz broadcast auxiliary frequencies not be diminished. That is, we look to a future where existing or perhaps slightly modified 2 GHz frequencies, the proposed 4 GHz spectrum discussed herein, and other auxiliary bands will all be employed in order to continue to deliver to television viewers the types of services to which they have become accustomed, and also to bring advanced, high quality, digital operations to the viewing public.

Alcatel and API assert that the 4 GHz band is best suited for point-to-point microwave facilities displaced by the implementation of PCS and that the Commission has not adequately accommodated these facilities. These assertions are unfounded. No party has shown that the spectrum identified in the transition plan for these displaced facilities is not adequate. As the Commission noted, it already has provided ample spectrum to accommodate displaced microwave incumbents.<sup>19</sup> Thus, until the spectrum identified for the relocation of displaced microwave incumbents proves inadequate, there is no need for the Commission to specifically earmark additional spectrum for this purpose.

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<sup>19</sup>See NPRM, supra note 3, ¶ 22.

With regard to ATI's request that wireless cable operators be permitted to use the 4660-4686 MHz band for interactive television applications, the Commission has already allocated spectrum for this specific purpose, in the form of the Interactive Video Data Service ("IVDS").<sup>20</sup> This IVDS service was created for the express purpose of providing a return data path for interactive TV applications. To date, although several IVDS licenses have been issued, this spectrum is principally unused. Therefore -- once again -- until the IVDS spectrum proves inadequate, there is no need to allocate additional spectrum for the same purpose in another band.

NAB does, however, share and support the position of Alcatel that the Commission should adopt service-specific allocations. For the 4660-4685 MHz band broadcasters need for auxiliary purposes, it would be a serious spectrum management mistake for the Commission to adopt a policy of "sharing" among disparate communications services. Rather, NAB and MSTV believe that the only responsible FCC action here is to give broadcast auxiliary an exclusive allocation of this frequency band.

### **CONCLUSION**

For the reasons stated above, NAB and MSTV again urge the Commission to reallocate the 4660-4685 MHz band for advanced, digital broadcast auxiliary operations. No party has put forward a better proposal for the use of this band. Moreover, by

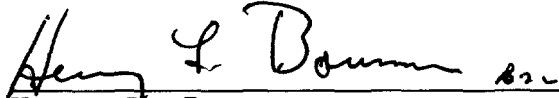
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<sup>20</sup>See 47 C.F.R. §§ 95.801-95.863.

allocating this band to broadcast auxiliary operations -- and rejecting contrary proposals advanced by other parties in this proceeding -- the Commission can ensure that the viewing public will continue to enjoy the highest quality, locally-based free, over-the-air television.

Respectfully submitted,

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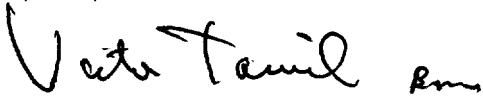
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January 6, 1995.



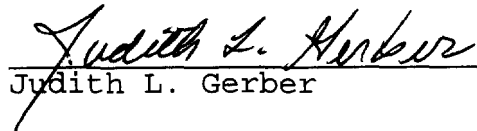
**CERTIFICATE OF SERVICE**

I, Judith L. Gerber, do hereby certify that a true and correct copy of the foregoing "Reply Comments of the National Association of Broadcasters and the Association for Maximum Service Television, Inc." was sent, via first class mail, on this date, January 6, 1995, to the following:

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